IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 59 of 2004

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMI SAHKARI SHARAFI MANDLI LIMITED,

Versus

ZINABHAI MERAMBHAI SATIA

Appearance:

1. Criminal Revision Application No. 59 of 2004

MR TUSHAR MEHTA for Petitioner No. 1

MR DHAVAL D VYAS for Respondent No. 1

MR KP RAVAL ADDL PP for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 21/04/2005

ORAL JUDGEMENT

The present petitioner has filed this revision

application under Section 397 read with Section 401 of the Code of Criminal Procedure against the judgement and order dated 15th December, 2003 passed by the learned Sessions Judge, Rajkot in Criminal Revision Application No. 153 of 2003, by which, the learned Sessions Judge has allowed the Revision Application and set aside the order dated 24.9.2003 passed by the learned Judicial Magistrate First Class, Rajkot below Ex.16 in Criminal Case No. 2518 of 2000, by which the learned JMFC has rejected the application submitted by the present respondent for setting aside the complaint.

2. Brief facts of the case is that the present petitioner lodged complaint under Section 142 of the Negotiable Instrument Act against the present respondent and case was registered as Criminal Case No. 2518 of 2000. Thereafter, respondent No. 1 filed an application praying for discharge under Section 227 of the Code of Criminal Procedure and after hearing both the parties and taking into consideration the records of the case, learned JMFC has rejected the said application and against the said order, the respondent filed Revision Application before the learned Sessions Judge, which is numbered as Criminal Revision Application No. 153 of 2003 and after hearing both the parties, learned Sessions Judge has allowed the revision application on 15.12.2003. Against the said judgement and order dated 15.12.2003, the present revision application is preferred by the present petitioner.

3. Heard Mr. Tushar Mehta, learned advocate for the petitioner, Mr. D.R. Vyas, learned advocate for the respondent No. 1 and Mr. K.P. Raval, learned Addl.P.P. for respondent No. 2 State of Gujarat.

4. During hearing Mr. Tushar Mehta, learned advocate for the petitioner has taken me through the order passed by the lower courts and documents attached with this revision application.

5. From the record it transpires that after verifying the complaint and after recording the statement of the complainant, the learned Magistrate has issued summons against the respondent and thereupon, discharge application under Section 227 of the Code of Criminal Procedure has been filed by the respondent contending therein that the notice is illegal and invalid. It is also contended in the application that as the complainant has demanded Rs.125/- towards notice charge as special compensation and as demand was made more than the amount of cheque, the notice is illegal and invalid. It is also

contended in the application that part payment was made towards the loan, so also the complaint is also not tenable and the complaint is time barred.

6. I have gone through the findings recorded by the lower court and this court is of the view that contention raised by the respondent can only be decided after recording of evidence and without recording evidence, this contention cannot be decided and the learned JMFC has rightly held that at this stage without recording the evidence, points raised by the respondent cannot be decided and has rightly rejected the application filed by the respondent. This court is also of the view that the learned Sessions Judge has erred in coming to the conclusion that complaint is time barred under the provisions of the Negotiable Instruments Act. There is no bar in lodging complaint under the provisions of the Negotiable Instruments Act, if Civil Suit is filed or decree is passed in favour of the complainant. The learned Additional Sessions Judge has wrongly come to the conclusion that as decree is passed in favour of the petitioner, then, the petitioner cannot file complaint under Section 138 of the Negotiable Instruments Act, 1938. This court is of the view that there is no illegality or impropriety found in the order passed by the learned JMFC below Ex.16 and learned Sessions Judge has erred in setting aside the order passed by the learned JMFC and hence, revision application is required to be allowed.

7. For the foregoing reasons, the revision application is allowed. The order passed by the learned Sessions Judge, Rajkot dated 15.12.2003 in Criminal Revision Application No. 153 of 2003 is hereby set aside. Rule is made absolute accordingly.

(M.D. Shah, J.)
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